

SECOND DIVISION

[G.R. No. 189833, February 05, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAVIER MORILLA Y AVELLANO, ACCUSED-APPELLANT.

R E S O L U T I O N

PEREZ, J.:

Before us is an appeal filed by accused-appellant Javier Morilla y Avellano (Morilla) from the Decision^[1] of the Court of Appeals which affirmed his conviction and that of his co-accused Ronnie Mitra y Tena (Mayor Mitra) by the trial court, sentencing them^[2] to suffer the penalty of life imprisonment and to pay a fine of P10,000,000.00 each.

The Regional Trial Court Judgment

On 15 October 2001, Morilla, Mayor Mitra, Willie Yang y Yao (Yang) and Ruel Dequilla y Regodan (Dequilla) were charged in a criminal information as follows:

That on or about October 13, 2001, in Barangay Kiloloran, Municipality of Real, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, one of them an incumbent mayor of the Municipality of Panukulan, Quezon Province, who all belong to an organized/syndicate crime group as they all help one another, for purposes of gain in the transport of illegal drugs, and in fact, conspiring and confederating together and mutually aiding and abetting one another, did then and there wilfully, unlawfully, and feloniously transport by means of two (2) motor vehicles, namely a Starex van bearing plate number RWT-888 with commemorative plate to read "Mayor" and a municipal ambulance of Panukulan, Quezon Province, methamphetamine hydrochloride, a regulated drug which is commonly known as shabu, and with an approximate weight of five hundred three point sixty eight (503.68) kilos, without authority whatsoever.^[3]

After trial, the Regional Trial Court of Quezon City^[4] on 1 August 2007 convicted Morilla and his co-accused Mayor Mitra, then incumbent Mayor of Panukulan, Quezon, of illegal transport^[5] of *methamphetamine hydrochloride*, commonly known as *shabu*, with an approximate weight of five hundred three point sixty eight (503.68) kilos. However, it absolved Dequilla and Yang due to the prosecution's failure to present sufficient evidence to convict them of the offense charged. The dispositive of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Ronnie Mitra y Tena and Javier Morilla y Avellana GUILTY beyond reasonable doubt of the offense charged. Accordingly, both accused are

hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of P10,000,000.00 each. Accused Willie Yang y Yao and Ruel Dequilla y Regodan are hereby ACQUITTED for failure of the prosecution to prove their guilt beyond reasonable doubt and are ordered immediately released from custody unless held for some other lawful cause.

The methamphetamine hydrochloride ordered retained by the Court as representative sample which is still in the custody of the PNP Crime Laboratory is ordered turned over to the Philippine Drug Enforcement Agency for proper disposition.^[6]

The trial court found valid the search conducted by police officers on the vehicles driven by Mayor Mitra and Morilla, one with control number 888 and the other an ambulance with plate number SFK-372, as the police officers have already acquired prior knowledge that the said vehicles were suspected to be used for transportation of dangerous drugs. During the checkpoint in Real, Quezon, the information turned out to be accurate and indeed, the two accused had in their motor vehicles more than five hundred kilos of *methamphetamine hydrochloride*.^[7]

The trial court dismissed the arguments of Mayor Mitra that he was without any knowledge of the contents of the sacks and that he was merely requested to transport them to Manila on board his Starex van. He explained that he only accommodated the request of a certain Ben Tan because the latter bought his fishing boat. It likewise dismissed the defense of ambulance driver Morilla of lack of knowledge of the illegality of the contents. Morilla insisted that he thought that he was just transporting wooden tiles and electronic spare parts together with Dequilla. The other passenger of the ambulance, Yang, in his defense, did not bother to inquire about the contents of the vehicle as he was merely an accommodated passenger of the ambulance.

The court rejected the defenses presented by Morilla and Mayor Mitra as they were caught *in flagrante delicto* of transporting dangerous drugs in two vehicles driven by each of them. Absent any convincing circumstance to corroborate their explanations, the validity of their apprehension was sustained.^[8]

The ruling of conspiracy between Mayor Mitra and Morilla was based on the testimonies of the four accused themselves. It was found by the trial court that the two vehicles, the Starex van driven by Mayor Mitra and the ambulance van driven by Morilla, left Infanta, Quezon en route to Manila. The Starex van which was ahead of the ambulance was able to pass the checkpoint set up by the police officers. However, the ambulance driven by Morilla was stopped by police officers. Through the untinted window, one of the police officers noticed several sacks inside the van. Upon inquiry of the contents, Morilla replied that the sacks contained narra wooden tiles. Unconvinced, the police officers requested Morilla to open the rear door of the car for further inspection. When it was opened, the operatives noticed that white crystalline granules were scattered on the floor, prompting them to request Morilla to open the sacks. At this moment, Morilla told the police officers that he was with Mayor Mitra in an attempt to persuade them to let him pass.^[9] His request was rejected by the police officers and upon inspection, the contents of the sacks turned out to be sacks of *methamphetamine hydrochloride*.^[10] This discovery prompted the operatives to chase the Starex van of Mayor Mitra. The police officers were able

to overtake the van and Mayor Mitra was asked to stop. They then inquired if the mayor knew Morilla. On plain view, the operatives noticed that his van was also loaded with sacks like the ones found in the ambulance. Thus, Mayor Mitra was also requested to open the door of the vehicle for inspection. At this instance, Mayor Mitra offered to settle the matter but the same was rejected. Upon examination, the contents of the sacks were likewise found to contain sacks of *methamphetamine hydrochloride*.^[11]

The two other accused in this case, Dequilla and Yang, were acquitted by the trial court for failure on the part of the prosecution to establish their guilt beyond reasonable doubt. The court ruled that Dequilla's and Yang's mere presence inside the vehicle as passengers was inadequate to prove that they were also conspirators of Mayor Mitra and Morilla.^[12]

The Court of Appeals Decision

On 13 July 2009, the appellate court affirmed the ruling of the trial court. It upheld the finding of conspiracy between Mayor Mitra and Morilla in their common intent to transport several sacks containing *methamphetamine hydrochloride* on board their respective vehicles. The singularity of their intent to illegally transport *methamphetamine hydrochloride* was readily shown when Morilla agreed to drive the ambulance van from Infanta, Quezon to Manila together with Mayor Mitra, who drove the lead vehicle, the Starex van.^[13]

The appellate court likewise dismissed the argument of lack of knowledge of the illegal contents of the sacks. The claim that the sacks were loaded with wooden tiles was implausible due to the obvious disparity of texture and volume.^[14]

Court's Ruling

We affirm the ruling but modify the penalty imposed.

In his supplemental brief, Morilla raised the issues: (1) whether he may be convicted for conspiracy to commit the offense charged sans allegation of conspiracy in the Information, and (2) whether the prosecution was able to prove his culpability as alleged in the Information.^[15]

We dismiss his arguments.

Morilla primarily cites the provision on Sec. 1(b), Rule 115 of the Rules on Criminal Procedure^[16] to substantiate his argument that he should have been informed first of the nature and cause of the accusation against him. He pointed out that the Information itself failed to state the word conspiracy but instead, the statement "the above-named accused, one of them an incumbent mayor of the Municipality of Panukulan, Quezon Province, who all belong to an organized/syndicated crime group as they all help one another, did then and there wilfully, unlawfully and feloniously transport x x x." He argued that conspiracy was only inferred from the words used in the Information.^[17]

Even assuming that his assertion is correct, the issue of defect in the information, at

this point, is deemed to have been waived due to Morilla's failure to assert it as a ground in a motion to quash before entering his plea.^[18]

Further, it must be noted that accused Morilla participated and presented his defenses to contradict the allegation of conspiracy before the trial and appellate courts. His failure or neglect to assert a right within a reasonable time warrants a presumption that the party entitled to assert it either has abandoned it or declined to assert it.^[19]

The finding of conspiracy by both courts is correct.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.^[20] To determine conspiracy, there must be a common design to commit a felony.^[21]

Morilla argues that the mere act of driving the ambulance on the date he was apprehended is not sufficient to prove that he was part of a syndicated group involved in the illegal transportation of dangerous drugs.

This argument is misplaced.

In conspiracy, it need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The assent of the minds may be and, from the secrecy of the crime, usually inferred from proof of facts and circumstances which, taken together, indicate that they are parts of some complete whole.^[22] In this case, the totality of the factual circumstances leads to a conclusion that Morilla conspired with Mayor Mitra in a common desire to transport the dangerous drugs. Both vehicles loaded with several sacks of dangerous drugs, were on convoy from Quezon to Manila. Mayor Mitra was able to drive through the checkpoint set up by the police operatives. When it was Morilla's turn to pass through the checkpoint, he was requested to open the rear door for a routinary check. Noticing white granules scattered on the floor, the police officers requested Morilla to open the sacks. If indeed he was not involved in conspiracy with Mayor Mitra, he would not have told the police officers that he was with the mayor.

His insistence that he was without any knowledge of the contents of the sacks and he just obeyed the instruction of his immediate superior Mayor Mitra in driving the said vehicle likewise bears no merit.

Here, Morilla and Mayor Mitra were caught *in flagrante delicto* in the act of transporting the dangerous drugs on board their vehicles. "Transport" as used under the Dangerous Drugs Act means "to carry or convey from one place to another."^[23] It was well established during trial that Morilla was driving the ambulance following the lead of Mayor Mitra, who was driving a Starex van going to Manila. The very act of transporting *methamphetamine hydrochloride* is *malum prohibitum* since it is punished as an offense under a special law. The fact of transportation of the sacks containing dangerous drugs need not be accompanied by proof of criminal intent, motive or knowledge.^[24]

In a similar case of *People v. Libnao*,^[25] this Court upheld the conviction for illegal